IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITIONS NO. 587 AND 588 OF 2004.

Mr. Fernando Sequeira Lobo,
residing at St. Tome,
Behind G.P.O., Panaji, Goa. .... Petitioner.

Versus

1. Mr. Jose E. Coelho Pereira.

2. Mr. Joaquim Herlander Alvaro
Coelho Pereira.

3. Mr. Sertorio Agostinho Filomena
Coelho Pereira.

4. Dr. Luis Amandio Coelho Pereira,
all of full age, and represented
herein by their lawful Attorney
Adv. J.E. Coelho Pereira,
residing at Dada Vaidya Road,
Panaji, Goa.

5. Administrative Tribunal,
Coelho Pereira Bldg.,
Dada Vaidya Road,
Panaji, Goa.

.... Respondents.

Shri F.E. Noronha, Advocate for the Petitioner.

Shri S.D. Lotlikar, Senior Advocate with Shri V. Korgaonkar, Advocate for the Respondents No.1 to 4.

CORAM: N. A. BRITTO, J.

DATE 10th February, 2005.

J U D G M E N T:

Rule. By consent heard forthwith.

2. By these petitions filed under Article 227 of the Constitution, the petitioner-tenant questions the legality of the Order dated 23.7.2004 of the Rent Controller, Panaji as upheld by the Administrative Tribunal by Order dated 10.12.04, dismissing the tenant's application for amendment of his written statement to enable him to withdraw the plea of permanent tenancy taken by him earlier by amending his written statement in proceedings filed by the respondents-landlords for his eviction.

3. The respondents who are the landlords had filed eviction proceedings for the eviction of the said tenant in respect of two floors of their building known as " Hotel Imperial " having Matriz No.336 under Section 22(2)(b)(i) and (ii) of the G.D.D. Buildings (L.R.E.) Act, 1968 (Act, for short) and a written statement was filed by the tenant on or about 16.12.1991 denying the case of the landlords.

4. On or about 7.7.93 the tenant filed an application for amendment of written statement stating that it would be in the interest of justice to allow the tenant to amend the written statement. By virtue of the said amendment application the tenant stated that he had purchased the establishment functioning in the said premises by means of Sale Deed on

29.4.58 and in view of that the tenant was claiming right of permanent tenancy to the suit premises and consequently the Court had no jurisdiction to entertain the said dispute. The said plea having been taken by the tenant, inquiry was started in the year 1994 or thereabout under Section 21 of the Act. When the said inquiry was about to conclude the landlords moved an amendment application for eviction of th tenant to incorporate an additional ground of eviction in the light of the claim of permanent tenancy claimed by the said tenant being malafide and for handing over vacant possession of the suit premises. Presumably the said amendment application was filed in the light of what has been stated by the Apex Court in the case of **J.J. Lal Pvt. Ltd. And others v. M.R. Murali and another [(2002) 3 S.C.C. 98).** On or about 27.12.1999 the Rent Controller allowed the application for amendment of the landlords and while dispose of the inquiry under S.21 of the Act ordered the eviction of the petitioner-tenant by concluding that the claim of permanent tenancy taken by the tenant was malafide. It appears that the tenant approached the Administrative Tribunal against the said order of the Rent Controller dated 27.12.99 and the Administrative Tribunal was pleased to remand the matter for a fresh decision in the said inquiry under S.21 of the Act. The landlords filed a review application before the Administrative Tribunal which was dismissed on 2.12.2003. The landlords being dissatisfied, approached this Court in W.P. No.651/2003 which was dismissed by Order dated 29.1.04

giving liberty to the landlords to file an application for amendment in the event the Rent Controller decided that the claim of permanent tenancy was malafide.

5. It appears that on 25.3.04 the Rent Controller refused an opportunity to the tenant to be heard orally as written submissions were filed by both the parties which were on record and fixed the case on 14.6.04. Against the said Order dated 25.3.04 the tenant filed revision applications before the Administrative Tribunal which the learned Administrative Tribunal was pleased to allow giving the parties an opportunity to advance oral arguments and dispose of the inquiry within 30 days. While the case was pending for oral arguments in the said inquiry under S.21 of the Act that the tenant on or about 14.6.04 moved the application for amendment of the written statement to withdraw the said claim of permanent tenancy which was objected to by the landlords and which, as already stated, came to be dismissed by the Rent Controller on 23.7.04.

6. Section 21 of the Act reads as follows :-

> " 21. Bar on eviction of tenants. - Notwithstanding anything to the contrary contained in any other law or contract, a tenant shall not be evicted, whether in execution of a decree or otherwise, except in accordance with the provisions of this Chapter.
>
> Provided that where the

> tenant denies the title of the landlord or claims a right of permanent tenancy, the Controller shall decide whether the denial or claim is bonafide and if he records a finding to that effect, the landlord shall be entitled to sue for eviction of the tenant in a civil court and the court may pass a decree for eviction on any of the grounds mentioned in this Chapter even though the court finds that such denial does not involve forfeiture of the lease or that the claim is unfounded. "

7. The learned Administrative Tribunal has observed that a right had accrued in favour of the landlords in terms of Section 22(2)(g) of the Act by claiming permanent tenancy and that after inquiry was initiated, after the first amendment more than a decade had passed and that the tenant by the proposed amendment was trying to give a go-bye to the inquiry conducted under S.21 of the Act and thus allowing the amendment would amount to non-suiting the respondents.

8. Shri Noronha, the learned counsel on behalf of the tenant has referred to the expression ' claims ' in the proviso to S.21 of the Act and has submitted that an inquiry under S.21 of the Act is a separate inquiry in the eviction proceedings filed by the landlords and therefore the tenant was entitled at any stage of the said inquiry to withdraw the said claim. Shri Noronha on this aspect has referred to the case of **Prahlad Dass v. Bhagirath Lal (A.I.R. 1977 Delhi, 129)** wherein after relying on the case

of **Roshan Lal and another v. Madan Lal and others (A.I.R. 1975 S.C. 2130)** it was held that the provisions of O.23, R.1, C.P.C. apply to eviction suits governed by special statute, and, the case of Prahlad Dass (supra) was under the Delhi Rent Control Act, 1975. Referring to the decision reported in **M/s Hulas Rai Baij Nath v. Firm K. B. Bass and Co. (A.I.R. 1968 S.C. 111)** Shri Noronha has submitted that the defendant has an unqualified right to withdraw the claim and further referring to the decision in **Thimaiah v. Madegowda (A.I.R. 1989 Karnataka 83)** has submitted that the defendant cannot be tied down to any particular plea. Again, referring to the decision in **National Agricultural Co-operative Marketing Federation of India Ltd. v. Alimenta S.A. (A.I.R. 1989 S.C. 818)** Shri Noronha has submitted that the defendant can give up part of the claim. Shri Noronha has further submitted that if at all any right will accrue to the landlord, it will be only after the decision in the said inquiry under S.21 of the Act and on this aspect Shri Noronha has placed reliance on the case of **Dolumal Sunderdas v. State of Madhya Pradesh and others (A.I.R. 1971 M.P.127).**

9. On the other hand Shri Lotlikar has submitted that the amendment application filed by the tenant to withdraw the plea earlier taken is malafide and has been filed with a view to avoid an adverse decision in the said inquiry held under S.21 of the Act and with a further view to delay the

eviction proceedings. Shri Lotlikar has further submitted that the moment a plea of permanent tenancy is taken, the same gives a right to the landlord to seek eviction of the tenant. Shri Lotlikar has placed reliance on the case of **Smt. Sabitri Debi v. Ramachandra Mishra and others (A.I.R. 1985 Orissa, 245)** wherein it is stated that :-

" The courts are no doubt lenient in allowing the amendment to the pleadings at any stage of the suit, when such amendments are relevant and necessary for effective adjudication of the dispute between the parties. But the amendment of pleadings should not become a matter of hide and seek between the parties or an attempt to out-wit the opponent. "

10. This Court will interfere in either certiorari or supervisory jurisdiction against an order of the subordinate or inferior Court only in case it is shown that the error committed is an error manifest and apparent on the face of the record or grave injustice or failure of justice has been occasioned thereby and not for correcting mere errors of fact or law. (See the case of **Surya Dev Rai v. Ram Chander Rai and Others [(2003) 6 S.C.C. 675])**. Shri Noronha, the learned Advocate of the tenant has not been able to show that the orders of the learned Rent Controller or for that matter of the Administrative Tribunal are utter;y erroneous apart from the reasons assigned by the Rent Controller or the Administrative

Tribunal. In fact, none of the authorities cited on behalf of the tenant or for that matter on the part of the landlords deal with the controversy which we faced in these petitions. Even the case of **Dolumal Sunderdas v. State of M.P. (A.I.R. 1971 M.P. 127)** dealt with a case of repeal of a statute and the right to take advantage of the provisions of a repealed statute. There can be no dispute that amendment of pleadings is a rule and refusal is an exception and as far as the amendment of a written statement, it is always granted more liberally than the amendment of plaint. Admittedly, the tenant by his first application dated 7.7.93 sought an amendment to the written statement, on the ground that it would be in the interest of justice to allow the tenant to take the plea of permanent tenancy. However the tenant in subsequent application dated 14.6.04 did not assign any reason as to why the tenant was withdrawing the plea of permanent tenancy taken by him earlier, and, it has been submitted by Shri Noronha that the withdrawal of the said plea is sought to be made on reconsideration of the matter. Admittedly, the case of case of eviction was filed by the landlords on two grounds namely the ground of S.22(2)(b)() and (ii) of the Act. The tenant by taking up the said plea of permanent tenancy gave the landlords an additional ground of eviction under S.22(2)(g) of the Act. The case of **M/s. Modi Spinning & Weaving Mills Co. Ltd. And another v. M/s. Ladha Ram & Co. (A.I.R. 1977 S.C. 680)** was a case of

displacing the plaintiff completely from admissions made by the defendants in the written statement and therefore the Supreme Court, speaking through its three learned Judges, disallowed an application for amendment of the written statement which would displace the plaintiff completely, from admissions made by the defendants in the written statement. The same analogy could be followed in the case at hand. The tenant by taking up the said plea of permanent tenancy gave a new or additional ground to the landlords for the eviction of the tenant, in case the said plea of permanent tenancy was proved not to be bonafide. Both the parties have been agitating over the said plea for over ten years. It would hardly matter if the said period of ten years lapsed on account of the fault of either of the parties or for that matter on account of the fault of the learned Rent Controller in adjourning the proceedings for one reason or the other. In my view an amendment which would displace the landlords from the said new ground of eviction made available to him by virtue of earlier amendment application ought not to have been allowed and has rightly not been allowed to be carried out by the Controller as well as the Administrative Tribunal.

11. In the above view of the matter, in my opinion, there is no merit in these petitions which are hereby dismissed. The learned Rent Controller is hereby directed to dispose of both the cases as per the directions of the Administrative Tribunal given in Order dated 10.6.04.

Expedite authenticated copy.

sl. **N. A. BRITTO, J.**